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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 22, 2001

APPLICATION OF

VIRGINIA GAS PIPELINE COMPANY

CASE NO. PUF010013

For authority to incur
indebtedness and to acquire
public utility assets

ORDER ON PROPOSED SETTLEMENT AGREEMENT

On September 5, 2001, the State Corporation Commission ("Commission") entered an order in this case authorizing Virginia Gas Pipeline Company ("VGPC") to acquire the utility assets of its affiliate Virginia Gas Company ("VGC") pursuant to Chapters 3 and 4 of Title 56 of the Code of Virginia. In that order, however, we noted that because VGPC and VGC did not seek or obtain approval for VGC to own the facilities that were a subject of the application in this case, the Commission may have cause to address the matter in a separate proceeding.

On October 2, 2001, the Staff of the Commission ("Staff") filed a Motion for Consideration of Settlement Agreement ("Motion") with the Commission, along with a copy of the Settlement Agreement ("Agreement") entered into by the Staff and VGPC. According to the Motion, the Agreement resolves all issues related to VGC assuming the role of a general contractor for, and ownership of, the expansion of the VGPC pipeline segment terminating in Radford, Virginia. The Agreement states that it also intends to resolve all issues related to the appeal of Case No. PUE000586 currently pending before the Virginia Supreme Court.

The salient features of the Agreement include:

- (1) A \$5,000 fine imposed upon VGPC for its alleged violation, namely, permitting VGC, a non-public service corporation, to hold an interest in VGPC's utility assets. Of this amount, \$4,000 is suspended on the condition that VGPC not violate this Order, or any Commission rule or order pertaining to the certification of its intrastate gas pipeline;
- (2) VGPC's surrender of Certificate No. GT-69, authorizing it to own, develop, construct and operate an intrastate natural gas transmission line in Pulaski, Roanoke, Montgomery and Franklin Counties. VGPC will have no further right or interest in said certificate;
- (3) VGPC and the Commission will jointly file a motion to dismiss Record No. 010755 at the Virginia Supreme Court based on the fact that VGPC has surrendered and the Commission has cancelled the certificate in question; and
- (4) VGPC will be permitted to book \$4.2 million of expenses that have been expended by it in securing Certificate No. GT-69. VGPC will defer and amortize these expenses over a 15-year period whose term runs commensurate with its previous agreements with Roanoke Gas Company. The parties recognize that the terms of this Agreement do not carry any binding ratemaking implications; provided however, that the Commission Staff agrees to support the principles contained in this Agreement in any future ratemaking proceedings before the Commission.
- (5) VGPC does not admit the allegations against it, but agrees to the settlement as an offer of compromise and settlement to the Commission and acknowledges the Commission's jurisdiction over the subject matter of the Agreement.

On October 4, 2001, the Commission entered an order permitting Stacy Snyder ("Snyder"), the appellant in Record No. 010755 currently pending before the Virginia Supreme Court, an opportunity to respond to the Motion on or before October 10, 2001, and the Staff and VGPC to reply to any such response by October 11, 2001. This opportunity was granted to Snyder at her request.¹ In that order, the Commission directed Snyder to state her interest in the proceeding, and the factual and legal basis for her standing to participate in Case No. PUF010013.

¹ Snyder sent a letter by facsimile to the Commission's General Counsel stating her objection to the Motion and her desire to file such objection prior to the Commission's ruling on the Motion.

On October 10, 2001, Snyder filed an Opposition to Motion for Consideration of Settlement Agreement ("Opposition") filed by the Staff. On October 11, 2001, both the Staff and VGPC filed Replies to Snyder's Opposition.

In Snyder's Opposition, she states that her interest in Case No. PUF010013 stems from her desire to represent the Commonwealth and its individual and business residents. Further, she states that she herself is affected by the eminent domain proceedings that may occur pursuant to the certificate granted to VGPC by the Commission in Case No. PUE990167. As the legal basis for her standing to participate in Case No. PUF010013, Snyder again cites Case No. PUE990167, as well as Case No. PUE000586, and further states that the Agreement entered into by VGPC and the Staff effectively made her a party to Case No. PUF010013. Snyder also contends that VGPC bought expansive easements from landowners using the threat of eminent domain, falsely representing to some landowners that it had a legal right to condemn the property for all the requested easements.

NOW THE COMMISSION, having considered the Staff's Motion and the Settlement Agreement, Snyder's Opposition to the Agreement, the Staff's and VGPC's Replies to Snyder's Opposition, and all applicable statutes and rules, finds that the Agreement provides a just and reasonable resolution to the issues in the captioned case, protects the public interest, and should be adopted. Further, we find that Snyder has no standing to participate in Case No. PUF010013.

With regard to Snyder's interest in representing the citizens of the Commonwealth, we find that, pursuant to 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure ("Rules"), she is legally barred from representing the interests of others before the Commission because she is not a licensed attorney. Additionally, any indirect interest Snyder may have in this proceeding solely as a resident of Virginia is not sufficient to make her, or those she purports

to represent, proper parties to this proceeding, and as such, neither she nor they can be aggrieved by any judgment rendered herein.

Furthermore, the fact that the Agreement entered into by VGPC and the Staff may affect the outcome of Record No. 010755 currently pending before the Virginia Supreme Court does not give Snyder standing to participate in this case now before us. Her interest remains pending before the Virginia Supreme Court, and any action taken by the Commission in this proceeding cannot bind Snyder or the Virginia Supreme Court. Moreover, Case No. PUF010013 is not the appropriate proceeding for Snyder to raise the various concerns and arguments set forth in her Opposition, for they relate to other matters for which there were and may still be forums for Snyder to pursue her complaints. Thus, we are not persuaded by Snyder's arguments, and find that she does not have standing to participate in Case No. PUF010013.

Notwithstanding this legal bar to Snyder's participation in this case, we feel compelled to address certain of Snyder's objections to the Agreement. First, Snyder argues that the Commission found in Case No. PUE000586 that it did not have jurisdiction to rule upon formal complaints, such as that filed by Snyder. That is not the case. In our November 14, 2000 Order in Case No. PUE000586, we found no grounds to revoke VGPC's certificate because of any fraud in its procurement, as alleged by Snyder in her October 5, 2000 motion filed with the Commission. In that motion, Snyder claimed that VGPC's use of expansive easements containing language regarding the use of the property for other utility lines amounted to a fraudulent misrepresentation before the Commission. Because Snyder's complaint did not state a claim for which relief could be granted, the Commission did not establish a separate proceeding to consider it, but rather addressed the complaint in its November 14, 2000 Order. The

Commission did not state, as Snyder alleges in her Opposition, that it lacked jurisdiction to rule upon the complaint filed by Snyder.

Indeed, any persons having a cause before the Commission, whether by statute, rule, or otherwise, against a public service company in Virginia, may file a petition with the Commission pursuant to 5 VAC 5-20-100 B of the Commission's Rules. The petition shall contain, among other things, a statement of the action sought and the legal basis for the Commission's jurisdiction to take the action sought. Where there is sufficient legal basis to warrant the action, the Commission will conduct formal proceedings on the petition. The Commission routinely entertains such petitions, and when appropriate, conducts formal proceedings on the complaints contained therein.² If Snyder or any other landowner has a complaint against VGPC regarding its activities as a public service company in Virginia, the Commission will consider any such complaints pursuant to 5 VAC 5-20-100 B of our Rules.

In her Opposition, Snyder also argues that the Agreement obligates the Commission to award another similar certificate to VGPC and determines that VGPC's customers will be required to absorb the \$4.2 million cost associated with preliminary expenditures for construction of the pipeline. The Agreement does nothing of the sort. It simply states that VGPC shall not be precluded from seeking the same or similar authority as that sought in Case No. PUE990167. If VGPC or any other public utility seeks such authority from the Commission, we are bound by law to proceed pursuant to § 56-265.2 of the Code of Virginia, which requires

² See Application of Vyvx of Virginia, Inc., For a certificate of public convenience and necessity to provide interexchange telecommunications services and to have its rates determined competitively, Case No. PUC970047, 1998 S.C.C. Ann. Rept. 221, *aff'd Vyvx of Virginia, Inc., v. John W. Cassell, et al.*, 258 Va. 276 (1999); Petition of Michael H. Ditton, To investigate Bell Atlantic-Virginia, Inc., Case No. PUC990176, Doc. Cont. Ctr. No. 010810145 (August 3, 2001 Final Order); Commonwealth of Virginia, ex rel. Robert E. Lee Jones, Jr. v. MCI WorldCom Network Services of Virginia, Inc., and MCI WorldCom Communications of Virginia, Inc., Case No. PUC990157, Doc. Cont. Ctr. No. 010840017 (August 22, 2001 Final Order), *reconsideration granted*, Doc. Cont. Ctr. No. 010920111 (*Order Granting Petition for Reconsideration and Motion to Suspend Final Order*, September 11, 2001).

notice and opportunity for hearing. The Commission cannot, as Snyder suggests, award VGPC another certificate absent the utility filing an application, complying with the relevant statutory requirements, and meeting its burden of proof to justify the issuance of a certificate.

Furthermore, the Agreement was entered into by the Staff of the Commission and VGPC, not the Commission itself. The Commission's adoption of the Agreement as a resolution to Case No. PUF010013 does not bind the Commission with respect to a new certificate or VGPC's recovery of the \$4.2 million of expenses associated with construction of the pipeline. The Agreement itself states that it shall have no binding ratemaking implications. If, at some future time, VGPC attempts to recover these costs through its rates, any interested parties will have the opportunity to participate in the rate proceeding, which is the proper forum to contest such recovery.

Accordingly, IT IS ORDERED THAT:

(1) The Settlement Agreement between VGPC and the Staff filed on October 2, 2001, is ADOPTED in its entirety, without change or condition.

(2) Certificate No. GT-69, having already been surrendered to the Commission by VGPC, is hereby cancelled. VGPC or its affiliates shall not be precluded from seeking future authority from the Commission to own, develop, construct and operate an intrastate natural gas pipeline system similar to that approved by the Commission for Certificate No. GT-69.

(3) A fine shall be imposed upon VGPC in the amount of \$5,000 for its alleged violation, \$4,000 of which shall be suspended on the condition that VGPC not violate this Order, or any Commission rule or order pertaining to the certification of its intrastate gas pipeline.

(4) On or before October 24, 2001, VGPC shall deliver to the Commission's Division of Energy Regulation a check in the amount of \$1,000 for the unsuspended portion of the fine, payable to the Treasurer of Virginia.

(5) The terms of the Agreement adopted herein do not carry any ratemaking implications.

(6) This matter shall be continued generally subject to the continuing review, audit, and appropriate directive of the Commission.